

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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Case No. A-5934

PETITION OF STEPHEN MERGENHAGEN AND DONNA KERR
(Hearing held November 12, 2003)

OPINION OF THE BOARD
(Effective date of Opinion, January 9, 2004)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for variances from Sections 59-C-1.323(b)(2) and 59-C-1.323(a). The petitioners propose to construct a new single-family dwelling that requires a variance of nine (9) feet as it is within eleven (11) feet of the rear lot line and a variance of sixteen (16) feet as it is within nine (9) feet of the front lot line. The required rear lot line setback is twenty (20) feet and the required front lot line setback is twenty-five (25) feet.

Edward and Cathy Johnson, property owners at 9210 Saybrook Avenue, appeared in opposition to the variance request.

The subject property is Lot 68, Branwill Park Subdivision, located at 9213 Wire Avenue, Silver Spring, Maryland, 20901, in the R-60 Zone (Tax Account No. 01008923).

Decision of the Board: Requested variances **granted**.

EVIDENCE PRESENTED TO THE BOARD

1. The petitioners propose to construct a new single-family dwelling.
2. The petitioners testified that the property is an oddly-shaped, shallow lot and that the property is the smallest lot in the neighborhood. The lot is 5251 square feet. The petitioners testified that Wire Avenue is a paper road and that the road is not maintained by the County.
3. The petitioners testified that the property's front lot line is 80 feet in length, the rear lot line is 87.67 feet in length, the western side lot line is 75.76 feet in length, and eastern side lot line is 53 feet in length. See, Exhibit No. 4 (site plan). The petitioners testified that the lot's dimensions limits new construction on the property and results in a very restrictive building envelope.

4. The petitioners testified that the architectural design of the house would be in the Cape Cod style and that it would be in harmony with the other homes in the neighborhood. The petitioners testified that the house's wider width is because of the shallowness of the lot.
5. Ms. Johnson testified that they were in opposition to the variance request because the resulting structure would be approximately 18 to 24 feet from their home and that the structure would be larger than most of the houses in the neighborhood. Mr. Johnson testified that the proposed structure would not be harmony with the neighboring homes and that the new structure may increase the drainage problems in the area.

FINDINGS OF THE BOARD

Based on the petitioners' binding testimony and the evidence of record, the Board finds that the variances can be granted. The requested variances comply with the applicable standards and requirements set forth in Section 59-G-3.1 as follows:

- (a) *By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.*

The property's front lot line is 80 feet, the rear lot line is 87.67 feet, the western side lot line is 75.76 feet, and the eastern side lot line is 53 feet, which results in a very shallow and irregularly shaped lot. The lot is substandard in that 5,251 square feet is less than the minimum lot size for the R-60 Zone of 6,000 square feet. See, Exhibit No. 10 (zoning vicinity map). The property is also located on a paper road and the road is not maintained by the County. The Board finds that these exceptional conditions are peculiar to the property and that the strict application of the regulations would result in practical difficulties for the property owners.

- (b) *Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions.*

The Board finds that the variances requested for the construction of a new single-family dwelling are the minimum reasonably necessary.

- (c) *Such variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any duly adopted and approved area master plan affecting the subject property.*

The Board finds that the proposed construction will continue the residential use of the property and that the variances will not impair the intent, purpose, or integrity of the general plan or approved area master plan.

(d) Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties.

The Board finds that the architectural design of the proposed dwelling will be similar to other homes in the neighborhood and that the variances will not be detrimental the use and enjoyment of the adjoining and neighboring properties.

Accordingly, the requested variance of nine (9) feet as it is within eleven (11) feet of the required twenty (20) foot rear lot line setback and the variance of sixteen (16) feet as it is within nine (9) feet of the required twenty-five (25) foot front lot line setback for the construction of a new single-family dwelling are granted subject to the following conditions:

1. The petitioners shall be bound by all of their testimony and exhibits of record, to the extent that such evidence and representations are identified in the Board's Opinion granting the variance.
2. Construction must be completed according to plans entered in the record as Exhibit Nos. 4 and 5(a) through 5(d).

The Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above be adopted as the Resolution required by law as its decision on the above entitled petition.

On a motion by Louise L. Mayer, seconded by Angelo M. Caputo, with Donna L. Barron, Allison Ishihara Fultz and Donald H. Spence, Jr., Chairman, in agreement, the Board adopted the foregoing Resolution.

Donald H. Spence, Jr.
Chairman, Montgomery County Board of Appeals

I do hereby certify that the foregoing Opinion was officially entered in the Opinion Book of the County Board of Appeals this 9th day of January, 2004.

Katherine Freeman
Executive Secretary to the Board

NOTE:

See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.

The Board shall cause a copy of this Opinion to be recorded among the Land Records of Montgomery County.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.